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UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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AARON JAMES and TIFFANY JAMES,  
Heirs and Proposed Personal Representatives  
of the Estate of Zane James,

Plaintiffs,

vs.

CASEY DAVIES, and COTTONWOOD  
HEIGHTS;

Defendants.

**REPLY MEMORANDUM  
SUPPORTING COTTONWOOD  
HEIGHTS'S MOTION FOR  
JUDGMENT ON THE PLEADINGS  
(DKT. NO. 123)**

Case No. 2:19CV341 HCN DBP

Judge Howard C. Nielson, Jr.  
Magistrate Judge Dustin B. Pead

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Cottonwood Heights submits this reply memorandum supporting its motion for judgment on the pleadings ([Dkt. No. 123](#)).

Through its motion, Cottonwood Heights moved to dismiss the claims under 42 U.S.C. § 1983 to the extent the Jameses asserted those claims as heirs of Zane James or in their personal capacities on the basis they lack standing; to dismiss the Jameses' wrongful death claim on the basis the Court lacks jurisdiction over that claim due to the Jameses' failure to timely file a

notice of claim; for judgment in its favor on the Estate’s claims under § 1983 and the Utah Constitution on the basis the Estate cannot establish a violation of Zane’s constitutional rights, which is a requirement for liability against the City; and for judgment in its favor on the claim for punitive damages, because such damages are not recoverable against governmental entities.

The Jameses did not oppose the majority of Cottonwood Heights’s motion.

### **ARGUMENT**

#### **I. THE JAMESES DO NOT DISPUTE THAT MANY OF THE CLAIMS AGAINST COTTONWOOD HEIGHTS SHOULD BE DISMISSED.**

The Jameses have “concede[ed] their wrongful death claims may not proceed” and that Cottonwood Heights is not subject to punitive damages.” (Resp. [Dkt. No. 147] at 1.) Those claims (first cause of action and punitive damages claim) should be dismissed with prejudice.

The Jameses did not address Cottonwood Heights’s argument regarding their lack of standing as individuals and heirs to pursue the § 1983 claims (second through fourth causes of action). Given the Jameses’ apparent acknowledgement that these claims fail for the reasons set out in Cottonwood Heights’s motion, they also should be dismissed with prejudice.

#### **II. COTTONWOOD HEIGHTS IS ENTITLED TO JUDGMENT ON THE PLEADINGS ON THE ESTATE’S CLAIMS UNDER § 1983 AND THE UTAH CONSTITUTION.**

The only opposition included in the Jameses’ response is to the argument regarding the Estate’s claims under § 1983 and the Utah Constitution. With respect to those claims, they incorporate their argument in their opposition (Dkt. No. 152) to Officer Davies’s motion that Officer Davies did violate Zane’s constitutional rights. The Jameses do not dispute that if the Court determines the allegations of the amended complaint and reviewable evidence do not

establish Officer Davies violated Zane's constitutional rights, the claims against Cottonwood Heights fail. *See Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1317–18 (10th Cir. 2002).

Pursuant to DUCivR 7-1(a)(7), Cottonwood Heights joins and incorporates Officer Davies's argument that the Estate cannot establish a violation of Zane's constitutional rights under the United States and Utah Constitutions. As a result, the Estate cannot establish municipal liability against Cottonwood Heights based on his conduct.

DATED this 29<sup>th</sup> day of March, 2022.

SNOW CHRISTENSEN & MARTINEAU

*/s/ Dani N. Cepernich*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 29<sup>th</sup> day of March, 2022, I electronically filed the foregoing  
**REPLY MEMORANDUM SUPPORTING COTTONWOOD HEIGHTS'S MOTION FOR**  
**JUDGMENT ON THE PLEADINGS (DKT. NO. 123)** with the Clerk of the Court using the  
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/s/ Shelly Deal \_\_\_\_\_